

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

W13b



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## COASTAL DEVELOPMENT PERMIT APPLICATION

**Application number** .....3-05-059 (previously 3-01-020), Pletz and Reinstedt

**Applicant**.....Mr. Stanley W. Pletz; Mr. And Mrs. Randall A. Reinstedt; (Agent: Dennis McElroy, McElroy Construction)

**Project location** .....1721 Sunset Drive, in the Asilomar Dunes neighborhood of Pacific Grove, Monterey County (APN 007-061-040).

**Project description**.....Construct new 2,837 sq. ft. one-story single family dwelling with attached two-car garage, driveway and walkway; grading of 289 cy.

Project Site =	27,034 square feet
Building Coverage =	2,837 square feet (11%)
Net Impervious Area (total 2,109 sf impervious area less 900 sf of driveway in setback) =	<u>1,209 square feet (4%)</u>
<b>Total Lot Coverage =</b>	<b>4,046 square feet (15%)</b>
Dune Restoration Area including Tidestrom's Lupine =	20,729 square feet (77%)
Dune Restoration Area with other native dune species =	<u>2,094 square feet (8%)</u>
<b>Total Landscaped Area =</b>	<b>22,823 square feet (85%)</b>

**Local approval**.....City of Pacific Grove: Mitigated Negative Declaration with Mitigation Monitoring Program adopted 2/13/01 by Architectural Review Board (ARB); final architectural approval received 2/13/01 (AA # 2651-99).

**File documents**.....Botanical Survey Report by Thomas Moss (11/8/98); Mitigation Monitoring Program by City of Pacific Grove (adopted 2/13/01); Archaeological Investigation by Archaeological Consulting (6/8/98); landscape restoration plan prepared by Paul Kephart (revised 8/17/00); Fish and Game 2018 Application for take of State Listed Species (8/17/00); Coastal Development Permit files 3-01-020 and 2-05-059; City of Pacific Grove certified Land Use Plan.

**Staff recommendation** ...Approval with Conditions



**California Coastal Commission**  
**January 2006 Meeting in San Pedro**

Staff: K. Cuffe Approved by:

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**Staff Note:** This same project was previously approved in August 2001 as CDP 3-01-020. Because of water shortage in the Monterey Peninsula, the applicant was required to provide proof of water service prior to issuance of the permit. The applicant submitted evidence that they had been placed on the Monterey County water waiting list in order to get water service to the site, and since Commission approval, their place on the list has moved up 13 places from number #32 to #19. While the applicants have been waiting for a water supply to become available, they have filed timely permit extensions twice over the last three years, extending the coastal development permit expiration date to August 7, 2005. Unfortunately, the applicant's last permit extension request was received on August 18, 2005, a little more than a week after the permit expiration date. The applicant has therefore submitted a new permit application request, for the same project previously approved by the Commission. Staff has determined that there are no changed circumstances that would require design modification or additional mitigation measures, and so has recommended approval with generally the same conditions as originally approved, updated to meet current standards.

**Summary:** The applicant proposes to construct a new one-story 2,837 square foot single-family dwelling, including a 501-sf garage on a 27,034 square foot lot in the Asilomar Dunes neighborhood of the City of Pacific Grove (See Exhibit A, B, C, D, and J). The City has a certified Land Use Plan (LUP), but the Implementation Plan has not yet been certified. Therefore, a coastal development permit for the project must be obtained from the Coastal Commission and the proposal is subject to the policies of Chapter 3 of the Coastal Act. The policies of the LUP, however, are looked to as guidance.

The Asilomar Dunes area has a number of unique biological and geological resources, including at least ten plant and one animal species of special concern, and dune landforms that are comprised almost entirely of quartz sand. Dunes are considered environmentally sensitive habitat areas (ESHA) because they include plant or animal life or their habitats, which are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The subject parcel is completely comprised of dune habitat and includes two plant species of special concern: Tidestrom's lupine (which is listed as a federal and state endangered plant species) and Monterey spineflower (which is listed as a federal threatened and California Native Plant Society List 1-B rare or endangered plant species). Although non-resource dependant development in ESHA is not consistent with the policies of Chapter 3 of the Coastal Act, some development of the site must be allowed in order to avoid a taking of the property without just compensation, as provided under Coastal Act Section 30010. The subject parcel is relatively small in size (only 0.62 acres), and is located adjacent to existing residential development. , The proposed residence has been sited to minimize impacts to endangered plant species on site. Recommended conditions of permit approval limit site coverage and require the implementation and monitoring of mitigation measures as necessary to minimize the impacts of development on ESHA and provide a reasonable economic use of the parcel.

In order to minimize disturbance to the unique, environmentally sensitive dune habitat that characterizes this area, the total maximum aggregate lot coverage under the City's LUP is limited to 15 percent of the lot area. As defined in the LUP, calculation of the maximum aggregate lot coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat.



Thus the maximum aggregate lot coverage allowed by the certified LUP for the 0.62-acre (27,034-sf) project site is 4,055 square feet. As designed, the project includes the residence, and paved driveway and paths, with a building footprint of 2,837 sf (11% lot coverage), and impermeable surface coverage of 1,209 sf (1,947 sf of paved driveway – less the 900 sf of driveway in the setback - and 162 sf of paved walkways). Thus, the total aggregate coverage as proposed is 4,046 square feet, or 15%. Therefore, as designed, the project conforms to the 15 percent maximum aggregate impervious lot coverage allowed by the certified LUP. Also, the project does not include any outdoor living area (i.e., that area nearest the dwelling to be left in a natural condition, or landscaped so as to avoid impervious surfaces, allowed by the LUP to be a maximum of 5% site coverage) and so further minimizes impacts to ESHA. However, because development on the site will result in the unavoidable taking of approximately 20 individual endangered Tidestrom’s lupine plants, the removal of 4,046 square feet of dune habitat from residential construction, and spill over impacts to the remaining dune habitat from ongoing residential use of the site, special conditions of this permit require a deed restriction to protect the remaining habitat outside the building envelope, mitigation measures to restore endangered plant habitat on site based on the Dune Habitat Restoration Plan prepared for the property, which provides an adequate restoration of Tidestrom’s lupine along with other native dune plant species, and creation of a buffer area between the proposed residence and the restored endangered plant habitat.

As conditioned by this permit, the project will be consistent with Coastal Act Section 30010 and will adequately mitigate for unavoidable impacts to environmentally sensitive habitat. The project is also consistent with Coastal Act policies protecting scenic and archaeological resources. Therefore, as conditioned, Staff recommends approval.

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- D. Asilomar Dunes Parcel Map
- E. Pacific Grove Coastal Zone Land Use Plan
- F. Pacific Grove Land Habitat Sensitivity Map
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- H. Pacific Grove Shoreline Access Map
- I. Project Site Plan, Elevations, and Botanical Survey Maps
- J. Applicants Project Photos
- K. Water Waiting List Assignment for Monterey Peninsula Water Management District
- L. Landscape Restoration Plan (excerpts)
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- N. Pacific Grove 2005 Water Waiting List
- O. General Depiction of Open Space Area

## I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.



**Motion.** I move that the Commission approve Coastal Development Permit Number 3-05-059 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

## II. Conditions of Approval

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions



- 1. Incorporation of City's Mitigation Requirements.** The Mitigations and Mitigation Monitoring Program adopted by the City of Pacific Grove in the final Negative Declaration for this project are attached as Exhibit M to this permit; these mitigation and monitoring requirements are hereby incorporated as conditions of this permit. However, in the event of a conflict between the City's requirements and the conditions of this permit, the conditions of this permit shall control.

Any revision or amendment of these adopted conditions and mitigation measures or the project plans as approved pursuant to the City's architectural review procedures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.

- 2. Open Space Restriction.** To ensure protection of the scenic and natural habitat values on all portions of the environmentally sensitive native dune habitat areas on the site, no development, as defined in Section 30106 of the Coastal Act, shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- A.** A building envelope area that includes the residence, garage/terrace, walkways and entire driveway as shown on final approved plans. The maximum aggregate lot coverage (which includes the building footprint, driveway outside of the front yard setback, and any other paved areas, decks and patios) shall not exceed 15 percent of the lot area.
- B.** Fencing and that part of the driveway that is not counted in the percent of coverage (i.e., that part of the driveway that is within the front yard setback). Fencing must protect public views and allow free passage of native wildlife, as provided by Local Coastal Program Land Use Plan Policy 2.3.5.1(e).
- C.** Habitat restoration, maintenance and monitoring activities, including removal of non-native plant species, conducted in accordance with the approved Dune Habitat Restoration Mitigation Plan;
- D.** Approved drainage improvements;
- E.** Entry for monitoring of restored areas and homeowner access within the restored area.
- F.** Provisions for necessary utility corridors, which may be included in accord with Special Condition 9.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT, the applicant shall submit, for review and approval of the Executive director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all areas of the site outside of the footprint of the residence, garage and driveway, shown by the plans prepared by Mr. Dennis McElroy, dated November 11, 1999, as generally shown by Exhibit xx, attached to this staff report.



- 3. Final Landscaping, Site Restoration, and Implementation Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for Executive Director review and approval two sets of a final Landscaping and Habitat Restoration and Mitigation Monitoring Plan.
- A. The final landscape and habitat restoration and mitigation monitoring plan provide for the protection, restoration, and enhancement of native dune habitat within the open space restricted area required by Special Condition 2 above. The submittal shall incorporate the restoration measures identified in the Moss and Kephart reports, as updated and revised if necessary to address current site conditions and maximize native habitat values. Submittal shall include evidence of review and approval by the City of Pacific Grove Architectural Review Board and the California Department of Fish and Game (due to unavoidable taking of endangered plant species: Tidestrom's lupine).
  - B. Within 30 days of completion of the landscaping installation, the permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved landscaping plans and describing long-term maintenance requirements for the landscaping.
  - C. Five years from the date of occupancy for the residence, the permittee or successors in interest shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a qualified specialist, that certifies the on-site landscaping is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.
  - D. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscape plan approved pursuant to this permit, the permittee, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscape plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved landscape plan, shall be carried out in coordination with the Executive Director until the approved landscaping is established to the Executive Director's satisfaction.
- 4. Fencing.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall satisfy the following requirements:
- A. Plans for temporary exclusionary fences to protect sensitive areas from disturbance during construction. Vehicle parking, storage or disposal of materials, shall not be allowed within the exclusionary fences. Fences shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed.



The exact placement of the temporary exclusionary fencing shall be identified on site by the project biologist. Evidence of inspection of the installed construction fence location by the project biologist shall be submitted to the Executive Director prior to commencement of construction. Fences shall be 4 feet high and secured by metal T-posts, spaced no more than 8 feet apart. Either mesh field fence or snow-drift fence, or comparable barrier, shall be used.

- B. Plans for any permanent split rail fencing or similar landscaping fence, that may be necessary to discourage trampling of the area to be restored and/or rehabilitated outside of the building envelope and the immediate outdoor living area. Fencing design shall be consistent with Condition 2B and submittal shall include evidence of review and approval by the City of Pacific Grove. If such fencing is used, it shall be installed prior to occupancy (or, prior to commencement of construction if used in lieu of temporary fencing required for habitat protection for that portion of the project site).
5. **Grading and Spoils Disposal.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit to the Executive Director for review and approval two sets of grading plans that shall identify the disposal site for excess excavated spoils. Disposal site and methods employed shall be subject to review and approval by the City of Pacific Grove, the project biologist and the Executive Director. If the material is to remain onsite, final grading plans shall show the location and proposed contouring for on-site reuse of excavated material. Such grading plans may also be incorporated into the landscape and habitat restoration plans required in Condition 3, above. If materials are to be exported offsite, the materials may be offered to the Asilomar State Beach, and disposed of as directed by the Department of Parks and Recreation. While off-site beneficial re-use of excess sand is strongly encouraged, Asilomar sand may not be exported outside the Asilomar Dunes – Spanish Bay area.
6. **Archaeological Mitigation.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.
7. **Environmental Monitoring During Construction.** Permittee shall employ an environmental monitor to ensure compliance with all mitigation requirements during the construction phase. The project's consulting biologists (Thomas Moss, Paul Kephart, or other consultant approved by the Executive Director and the City of Pacific Grove Community Development Director) shall monitor construction activities on a weekly basis until project completion to assure compliance with the mitigation measures adopted by the City (Exhibit M). Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction. In the event of non-compliance with the adopted



mitigation measures, the Executive Director shall be notified immediately. The environmental consultant or the City shall make recommendations, if necessary, for compliance with the adopted mitigation measures. These recommendations shall be carried out immediately to protect the natural habitat areas of the site.

- 8. Exterior Finish.** All exterior finishes and window frames shall be of wood or earthen-tone colors, approved by the city of Pacific Grove Architectural Review Board.
- 9. Utility Connections.** All utility connections shall be installed underground as proposed. When installing the necessary utility connections, care shall be taken to minimize surface disturbance of the deed-restricted revegetation in accordance with Special Conditions 2 and 3.
- 10. Evidence of Water Availability.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall submit written evidence to the Executive Director for review and approval that adequate water, which shall be provided only by and through the municipal water distribution system regulated by the California American Water Company in the City of Pacific Grove according to the allocation procedures of the City and the Monterey Peninsula Water Management District, is available for the project. All relevant agency approvals, including approval from the Monterey County Public Health Department, if required, shall be provided.
- 11. Endangered Plant Species Management Authorization.** PRIOR TO CONSTRUCTION Applicant shall submit evidence of approval from California Department of Fish and Game for 2018 Management Authorization Permit for take of a listed California Endangered Species Act species (take of Tidestrom's lupine). A copy of the revised Dune Habitat Restoration Mitigation Plan shall be submitted for final Executive Director review and approval once the CDFG has indicated that the plan is adequate to ensure the protection of the remaining endangered species plant habitat on site. The applicant shall comply with the restoration and monitoring requirements described in the approved plan for a period of five years. Annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years following construction and planting.
- 12. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property.

The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes,



or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

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### III. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Description

##### 1. Project Location

The site of the proposed house is a rectangular,  $\pm$  27,034 square foot vacant lot at 1721 Sunset Drive (between Arena Avenue and Pico Avenue) in the Asilomar Dunes neighborhood of the City of Pacific Grove. The Asilomar Dunes neighborhood is mapped as the area bounded by Lighthouse Avenue, Asilomar Avenue, and the northern boundary of Asilomar State Park to the south. West of the site, across Sunset Drive, is a narrow, low, coastal bluff that is part of the Asilomar State Beach. (See Exhibits A-H.)

The lot is roughly 118-foot wide by 238-ft and 292-ft on its northern and southern boundaries, respectively. According to the 1998 biological report prepared for the site by Tom Moss, the western half of the site is dominated by a bowl-shaped blowout that is nearly barren of vegetation, but which has been stabilized along the sides by a mix of exotic and native plants. The eastern half of the property rises approximately 20 feet higher than the western portion and includes a ridge of sand hummocks that are topped with iceplant.

As shown in the 1998 botanical/biological survey conducted by Moss, the property contains a mixture of 24 different native and exotic plant species (Exhibit I), including eighteen native dune plant species, six exotic invasive plant species and two species of special concern. The two special concern plant species found on site include Tidestrom's lupine (*Lupinus tidestromii* var. *tidestromii*) and Monterey spineflower (*Chorizanthe pungens* var. *pungens*). Tidestrom's lupine (*Lupinus tidestromii* var. *tidestromii*), is a state and federal listed Endangered Species, and the Monterey spineflower is a Federal threatened species. Both plants are also listed as California Native Plant Society List 1B- Rare or Endangered plant species. The biological report states that the property is sparsely vegetated, except for scattered patches of ice plant and small groups of native dune plants that occur in several areas, and which include the endangered Tidestrom's lupine in relatively high numbers (Exhibit I). One individual Monterey spineflower (*Chorizanthe pungens* var. *pungens*) was also mapped in the northeastern corner of the site.

Wildlife expected to occur on the site include those species that have adapted to coexist in the an urban setting (eg., black-tailed deer, raccoon, opossum, and various bird species). According to the biological survey, only one animal species of special concern, the black legless lizard (*Anniella pulchra nigra*) are likely to exist on the site, although surveys were not conducted for this species at the time of the survey.



As described in the adopted Initial Study/Mitigated Negative Declaration prepared for the project by the City of Pacific Grove, the subject parcel is located in an area zoned R-1-B-4, Low Density Residential, 1-2 dwelling units per acre. According to the Initial Study/Mitigated Negative Declaration, development within the surrounding neighborhood is characterized by single-family dwellings on lots that are larger than those typically found in Pacific Grove (see Exhibit D). This low-density zoning on relatively large lots gives this area an open-space character consistent with the zoning and low-density residential Land Use Plan designation.

The subject site is located within an archaeologically sensitive area (see Exhibit G). Therefore, an archaeological survey was conducted for the subject parcel and a report prepared by Mary Doane and Trudy Haversat for Archaeological Consulting (June 8, 1998). The survey results indicated that while numerous sites are located within one kilometer of the project site, none are on the project parcel itself. Two recorded sites are located on adjacent parcels to the north and further west across Sunset Avenue, but no archaeological materials were found on site. The report concludes that the project area does not contain surface evidence of potentially significant cultural resources, and recommends that since construction activities may unearth previously undisturbed materials, the project should be conditioned to require preparation and implementation of an archaeological mitigation plan if archaeological resources are encountered.

## 2. Project Description

The applicants propose to build a 2,837 square foot single-family dwelling, which includes an outdoor terrace over a 501-square foot garage (Exhibit I). As designed, the project includes the residence, paved driveway and entry path. Construction of the new residence will require the excavation of 292 cubic yards of material, and 3 cubic yards of fill (net excavation of 289 cubic yards), which may be used for restoration of dune habitat on site. The applicant has not requested any permanent fencing as part of this project. As designed, the residence will be located approximately 126 feet from Sunset Drive, 60 feet from the rear property boundary, 15 feet from the southern property boundary and 32 feet from the northern property boundary. The driveway access and building site have therefore been sited to minimize impacts to mapped populations of Tidestrom's lupine in the western and southeastern portions of the site, and Monterey spineflower located in the northeastern corner of the site (see Exhibit I).

The maximum aggregate lot coverage for the 0.62-acre (27,034-sf) project site is 4,055 square feet. As designed, the project includes the residence and paved driveway and entry path. With a building footprint of 2,837 sf (11% lot coverage), and net impermeable surface coverage of 1,209 sf (1,947 sf of paved driveway – less the 900 sf of driveway in the setback - and 162 sf of paved walkways), the total aggregate coverage as proposed is 4,046 square feet, or 15% of the total lot area. Therefore, as designed, the project conforms to the 15% maximum aggregate lot coverage allowed under the City's certified LUP. The project does not include any additional outdoor living area (i.e., as defined in the LUP, that area nearest the dwelling to be left in a natural condition, or landscaped so as to avoid impervious surfaces) and so further minimizes impacts to ESHA.

While the project has been scaled and sited to minimize impacts to ESHA, any development on the site will result in the unavoidable impacts to the endangered plant species that are scattered across the



parcel. Because the proposed project will result in the unavoidable “take” of approximately 20 individual endangered Tidestrom’s lupine plants, the destruction of dune habitat, and spill over impacts to the remaining dune habitat, special conditions are required to minimize and mitigate for the impacts of the development, which among other things require a deed restriction to protect the remaining habitat outside the building envelope, mitigation measures to restore endangered plant habitat on site using a 3:1 replacement ratio for Tidestrom’s lupine, and creation of a buffer area between the proposed residence and the restored endangered plant habitat. The applicants must also obtain approval for a 2081 Management Authorization from the California Department of Fish and Game for the unavoidable take of 20 Tidestrom's lupine associated with this project and for the proposed dune habitat restoration mitigation plan, prepared for this site by Mr. Paul Kephart (revised 8/17/2000).

## B. Standard of Review

The Asilomar Dunes portion of the City of Pacific Grove is within the coastal zone (Exhibit E), but the City does not have a certified total LCP. The City’s Land Use Plan (LUP) was certified in 1991, but the zoning, or Implementation Plan (IP) portion of the LCP has not yet been certified. Because the City does not yet have a certified total LCP, the Coastal Commission must issue coastal development permits, with the standard of review being the Coastal Act. The certified LUP may serve as an advisory document to the Commission for specific areas within the Pacific Grove area.

## C. Basis of Decision

When the City of Pacific Grove completes the implementation portion of its Local Coastal Program (LCP), the LCP will become the standard of review for coastal development permits. In the meanwhile, the standard of review is conformance with the policies of the California Coastal Act. These policies include Section 30240, which prohibits any significant disruption of environmentally sensitive habitat areas, and bans those uses that are not dependent on such resources.

In this case, the entire buildable area of the 0.62-acre parcel comprises environmentally sensitive coastal dune habitat (see finding D below for details). Accordingly, because the proposed single family residence is not a resource-dependent use and would result in a significant habitat disruption, there is no place on this parcel where any reasonably-sized residential development could be found consistent with Section 30240. Therefore, absent other considerations, this project would have to be recommended for denial.

On the other hand, Coastal Act Section 30010 provides:

*The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*



The Coastal Commission is not organized or authorized to compensate landowners denied reasonable economic use of their otherwise developable residential property. Therefore, in order to preclude a claim of taking and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows the development of a single family residence by way of providing for reasonable economic use of this property. This determination is based on the Commission's finding in Section D2 of this staff report, below, that the property was gifted to the applicants by in-laws in 1967, and was reappraised in 1995, with the expectation of possible future residential use. Such expectation is reasonable given that the property has been zoned for residential use for many years, and was zoned as residential when received by the applicants. In addition, the Commission notes, that over the applicant's holding of the property over \$14,000 in taxes have been paid (\$420 annually over 34 years). Therefore, as conditioned, the proposed development is commensurate with such investment-backed expectations for the site. Although the project is not consistent with the ESHA protection policy of Coastal Act Section 30240, this approval is conditioned to be consistent with this policy to the maximum extent feasible without denying all economic use which, as discussed, could result in a taking.

## D. Coastal Development Permit Determination

When the City of Pacific Grove completes the implementation portion of its Local Coastal Program (LCP), the LCP will become the standard of review for coastal development permits. In the meanwhile, the standard of review is conformance with the policies of the California Coastal Act. These policies include Section 30240, which prohibits any significant disruption of environmentally sensitive habitat areas, and bans those uses which are not dependent on such resources; Section 30251, which requires protection of scenic and visual resources, and that, among other things, development be visually compatible with the character of surrounding areas; and Section 30244, which requires mitigation measures when development would adversely impact archaeological resources.

### 1. Environmentally Sensitive Habitat Areas

#### a. Applicable Environmentally Sensitive Habitat Area (ESHA) Policies

The Coastal Act, in Section 30240, states:

***30240(a)**...Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

The Coastal Act in Section 30107.5, defines an environmentally sensitive area as

***30107.5**...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

#### b. ESHA Analysis



## 1. Description of Environmentally Sensitive Habitat

The proposed single-family dwelling is located in the Asilomar Dunes area of the Monterey Peninsula. As described in the Initial Study / Negative Declaration (IS/ND) prepared by the City of Pacific Grove (dated 1/4/01), the Asilomar Dunes area is a sand dune complex located west of Asilomar Avenue between Lighthouse Avenue and the shoreline south of Asilomar State Park. The Asilomar Dunes area extends inland from the shoreline dunes and bluffs through a series of dune ridges and interdune swales to the edge of Monterey pine forest. The unusually pure, white quartz sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original approximately 480-acre habitat area remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation.

While a number of preservation and restoration efforts have been undertaken, most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots, certain plants and animals, characteristic of this environmentally sensitive habitat, have become rare or endangered. The Asilomar Dune ecosystem includes up to ten plant species and one animal species of special concern (Exhibit G) that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of the Asilomar Dunes area. The best known of these native dune plants are the Menzie's wallflower, Monterey spineflower and the Tidestrom's lupine, all of which have been reduced to very low population levels through habitat loss and are now Federally-listed endangered species. Additionally, the native dune vegetation in the Asilomar Dunes area also includes more common species that play a special role in the ecosystem; for example, the bush lupine which provides shelter for the rare Black legless lizard, and the coast buckwheat, which hosts the endangered Smith's blue butterfly. Because of these unique biological and geological characteristics of the Asilomar Dunes, all properties in the Asilomar Dunes area are located within environmentally sensitive habitat areas (Exhibit F).

Earlier biological surveys of the site, conducted by Thomas Moss, consulting coastal biologist, on May 16<sup>th</sup> and June 6<sup>th</sup> of 1998, confirm that while the site contains large areas of iceplant, it also contains substantial dune landforms, and small groupings of native dune plants that include significant numbers of endangered dune plant species (including Tidestrom's lupine and Monterey spineflower). The 1998 Moss surveys were conducted prior to any proposed development, in order to determine the feasibility of potential residential development on the property. Therefore the subsequent report prepared for the property owner (dated November 8, 1998) provides only a general assessment of potential impacts related to possible development of the parcel. The 1998 Moss report and survey maps indicate that the site contained a total of 472 individual Tidestrom's lupine plants, with 416 plants in the western quarter of the property, 43 in the southeastern corner of the property and 13 scattered through the central portion of the property, as shown in rare plant map prepared for the site (Exhibit I). One Monterey spineflower plant was also identified in the northeastern corner of the property.

A follow-up biological survey was conducted by Paul Kephart, consulting coastal biologist, in May of 2000, to determine potential impacts of proposed development plans (dated 11/11/99) that had been prepared by the applicant's contractor, Dennis McElroy. The May 2000 follow up survey compared existing site conditions with site conditions surveyed during the previous 1998 Moss surveys. Kephart's



results, as detailed in the Revised Dune Habitat Restoration Mitigation Plan (prepared August 17, 2000), concurred with Moss' count and mapping of endangered plants present on site.

Additionally, the more common native dune plant species found on site (as listed in Exhibit I), while not necessarily endangered, play an important role in the ecosystem, by contributing to the maintenance of the natural habitat and stabilizing the dune sand and hence dune landforms. Therefore, in addition to the dune areas that currently contain endangered plants, the areas adjacent to endangered dune plants, i.e., those areas that support or potentially support native dune flora must also be considered environmentally sensitive habitat areas. For this reason, 100% of the lot is comprised of environmentally sensitive habitat.

In summary, based upon the surveys and biological reports prepared for the project, testimony received at the local hearing, prior Commission actions on other proposed development in the dunes, and staff observations, the Commission finds that the site is located within environmentally sensitive habitat consistent with the definition found in Section 30107.5 of the Coastal Act.

## 2. Implementing Section 30010 and 30240 of the Coastal Act

As described above, the entire area of the applicant's 27,034 square foot (0.62-acre) parcel is an environmentally sensitive dune habitat. The proposed development as submitted includes a single-family dwelling with garage and paved driveway and paths. This project will require a net grading of 289 cubic yards of material and will result in a permanent loss of approximately 4,946 square feet of environmentally sensitive habitat (2,837 square foot building coverage + 1,209 square feet of impervious surfacing outside of setback + 900 square feet of impervious surfacing within setback).

Additional disruptions will result from residential development and subsequent use of the site, but while they will have direct and indirect impacts on the dune habitat, they are uses that are generally amenable to native plant restoration and maintenance measures. Such activities may include: installation of a storm drain system, utility trenching and, over the long run, ordinary residential activities on the premises. None of these development activities are of a type that is dependent on a location within the sensitive resource area. Therefore, this development and its associated activities, individually and collectively, will result in a significant disruption of the environmentally sensitive dune and forest habitat area on site. Therefore, this project cannot be found consistent with Coastal Act Section 30240.

However, as detailed in Finding C above, Coastal Act Section 30240 must be applied in the context of the other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation." Thus, if strict construction of the restrictions in Section 30240 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Once an applicant has obtained a final and authoritative decision from a public agency, and a taking claim is "ripe" for review, a court is in a position to determine whether the permit decision constitutes a taking. The court first must determine whether the permit decision constitutes a categorical or "per se"



taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U. S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it “valueless,” the decision constitutes a taking unless the denial of all economic use was permitted by a “background principle” of state real property law. Background principles are those state law rules that inhere in the title to the property sought to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. The absence of reasonable, investment-backed expectations is a complete defense to a taking claim under the ad hoc inquiry (e.g., *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009), in addition to any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

Because permit decisions rarely render property “valueless,” courts seldom find that permit decisions constitute takings under the *Lucas* criteria. In this case, there is insufficient evidence to evaluate whether the denial of non-resource dependent uses would constitute a taking under *Lucas* because there is no evidence regarding whether such a decision would render the property “valueless” or whether the use being proposed by the applicant would constitute a nuisance or otherwise be precluded by some background principle of California property law. For the reasons that follow, however, the Commission finds that there is sufficient evidence that a court might find that the denial of a non-resource dependent use on this property would constitute a taking under the ad hoc takings analysis, and that the Coastal Act, therefore, allows the approval of a non-resource dependent use.

In this situation, the Asilomar Dunes area has already been subdivided into residential lots, and has over the years been partially developed. Indeed, residences are located directly adjacent to the project site and other residences are in the immediate vicinity (Exhibit D). In view of the location of the applicant's parcel and, in particular, its small lot size, the Commission is unaware of any use that would be both dependent on the environmentally significant resources of the site as otherwise required by Section 30240 and capable of providing an economically viable use. The Commission is also unaware of any intent by any public agency to purchase this or other similarly situated and zoned lots in the Asilomar Dunes. Therefore, it is reasonable to conclude that permanently restricting the use of the property to resource dependant uses could potentially eliminate the economic value of the property.

In the late 1950's, Mr. Reinstedt senior purchased this and an adjacent lot for a future residential use for an unknown amount of money. In 1967, Mr. Reinstedt died and Mr. Pletz and his wife ( Mr. Reinstedt's daughter ) inherited a half interest in the property upon distribution of the estate. Mr. Reinstedt, the son of the deceased Mr. Reinstedt also received a one half interest in the property. At that time, the property was valued at approximately \$20,000. The Reinstedts and Pletz' retained the property over the years with the expectation of one day building a house on the site. During this period, annual property taxes were paid but the property did not generate any economic use. The value of the land has increased markedly since 1967 due to the change in economic forces and demand for view lots that have occurred in this



area. The property was re-appraised in 1995 (following the loss of Mr. Pletz' spouse) and was revalued at approximately \$495,000, consistent with the price of similarly situated lots in the neighborhood.

Based on this information, the Applicants received the property as an inheritance and held it for eventual development. It is reasonable to believe that the applicants expected that some residential development would be allowed on this property, based on several factors. For instance, the parcel was and is designated for residential use in the City of Pacific Grove's Land Use Plan and in the City's zoning ordinances, although as the applicants recognize, the City's LUP allows only 15% site coverage in the Asilomar Dunes. Further, the parcel is located on Sunset Drive among other residential properties that have been developed with houses of a similar size to that proposed in this application, and where public utility service is currently available. As noted above, a substantial number of parcels in the Asilomar Dunes area are already developed and have been for some time.

As a further basis of an expectation of residential use, the Commission has approved a number of new homes similar in size to this along Sunset Drive that also provided for development in an area with environmentally sensitive habitat (e.g., Miller, Coastal Development Permit No. 3-96-81). That approval was for a house with approximately 12 percent lot coverage. More recently, the Commission has approved houses along Sunset Drive in May of 2000 (Knight, Coastal Development Permit No. 3-99-071), in May 2001 (Baldacci, CDP 3-01-013), and in January 2004 (Kwiatkowski, CDP 3-03-029). These parcels front Sunset Drive, and were restricted to the maximum total aggregate lot coverage allowed under the certified LUP.

After reviewing these factors (LUP provisions allowing 15% site coverage, zoning, existence of similar homes approved by both the City and the Commission), the Commission finds that an applicant would have had reasonable basis for expecting that the Commission would approve a residential use of the property, subject to conditions to mitigate the adverse impacts that likely would result from development in this sensitive resource area to the maximum degree possible while still avoiding a "takings".

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. At the time the applicants obtained the property it was valued at \$20,000. This investment has grown over the years to now be worth approximately \$495,000 as of 1995. Since the date of purchase, the property has generated no income, and it has been taxed based on its current zoning designation as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use, although the purchase price does not guarantee any particular type or size of development and is only one factor in the overall analysis.

In view of the findings that (1) permanently restricting use of the property to resource dependant uses could potentially eliminate the economic value of the property, (2) residential use of the property would provide an economic use, and (3) the applicants had a reasonable investment backed expectation that a fully mitigated residential use would be allowed on their property, there is a reasonable possibility that a court might determine that the final denial of a residential use based on the inconsistency of this use with Section 30240 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and



the Constitutions of California and the United States, the Commission determines that implementation of Section 30240 in a manner that would permanently prohibit residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30240, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the City Land Use Plan and Coastal Act also provided notice that such residential use would be contingent on the implementation of mitigation measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of Section 30240 to the maximum extent feasible by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property.

In the present situation, there are several conditions that the Commission can adopt that implement Section 30240 to the maximum extent feasible, while still allowing a reasonable size house on the property. The applicants currently propose to cover over 4,046 sf of the 0.62-acre parcel with building and paving (+ 900 sf of paved driveway within the setback area). As a result, this same amount of dune habitat will be permanently lost, with some additional habitat area disrupted by construction activities. However, the extent of this disruption and land alteration can and shall be mitigated to the maximum extent feasible by the implementation of appropriate conditions.

Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. Most importantly, Special Condition No. 2 requires that the undeveloped area on the property shall be preserved in open space subject to an open space restriction that prohibits uses that are inconsistent with habitat restoration and preservation. This open space restriction shall run with the land in order to ensure that future owners are aware of the constraints associated with this site.

### 3. Cumulative Impacts.

The applicant's project is located nearly in the middle of the Asilomar Dunes complex, an area now of approximately 60 acres where the dunes retain roughly their original contours. Although divided into about 95 lots and developed with some 75 existing dwellings (Exhibit D), the area still contains some of the best remaining examples of original Asilomar Dunes flora.

The cumulative impacts of additional residential development would have a substantial adverse impact on the unique ecology of the Asilomar Dunes, as each loss of natural habitat area within the Asilomar Dunes formation contributes to the overall degradation of this extremely scarce coastal resource. The adverse effects from the sum of past development impacts have progressed to the point that on existing lots of record in the nearby unincorporated portion of the Asilomar Dunes, all remnant coastal dune areas must, under the County's certified Local Coastal Program (LCP), be preserved. (A very substantial effort to restore a natural dune habitat was required as a condition of resort development at



Spanish Bay, but has proven to be much more successful on the remnants of the original dunes than on imported material).

Notwithstanding the cumulative impacts of continuing residential development in the Asilomar Dunes, absent purchase of the remaining lots, some development must be allowed. The City's Land Use Plan contains rigorous policies designed to protect the native dune and shoreline pine forest habitat area and to minimize cumulative impacts. The Coastal Act's environmentally sensitive policies are very broad as they are meant to protect the large variety of environmentally sensitive habitats that are found along the entire length of the state's coast. The LUP Asilomar Dunes policies, on the other hand, are very narrow and specific to the environmentally sensitive habitat found in the Asilomar Dunes.

Coastal Act Section 30240 would disallow any development in the Asilomar Dunes and might result in a taking of private property. Yet Section 30010, prohibits taking of private property without just compensation. Because the Commission is not authorized to purchase land, some development must be allowed, but Section 30240 requires protection of sensitive habitats to the maximum extent feasible. Here, there is a certified LUP that provides guidance by indicating the amount of development that can be allowed. Although in this case, where the complete LCP has yet to be certified and therefore the certified LUP is advisory only, the environmentally sensitive habitat policies of the LUP were developed to tailor the requirements of Coastal Act Section 30240 to the environmentally sensitive habitats found in the Asilomar Dunes. The LUP recognizes, as does Coastal Act Section 30010, that the Constitutions of the United States and the State of California prohibit governmental actions that result in the taking of private property without just compensation. Here, that means that some development must be allowed. The amount of development to be allowed was determined during the development of the LUP to be that which would result in a maximum of 15 percent impervious lot coverage, with the vast majority of the lot to be preserved as open space habitat. According to the findings for certification of the LUP in 1988, the maximum coverage proposed by the City was 20 percent. Staff recommended a modification to limit the maximum coverage to 15 percent, a "standard which evolved through the coastal permit process" for previous residential development approvals by the Commission. The 1988 findings also states that:

Over a period of 14 years, the Coastal Commission has considered several dozen coastal development requests in the Asilomar Dunes area. . . .

Because of this existing pattern of use, it wasn't feasible to exclude residential development from existing vacant parcels. Therefore, the Commission has emphasized preservation and restoration of remaining habitat rather than strict prohibition . . . Generally, this has meant that building and driveway coverage have been limited to 15 % or less of the parcel area. . .

#### 4. Land Use Plan Criteria.

As the applicants' site lies in the middle of the Asilomar Dunes complex, it falls within the area covered by the City of Pacific Grove's Local Coastal Program Land Use Plan (LUP). (The City of Pacific Grove annexed this portion of the dune formation in October 1980.) The City's LUP residential development criteria include the Coastal Act requirement of "no significant disruption" of environmentally sensitive



habitat-areas, as provided by Section 30240. The City's LUP was approved with modifications by the Commission on January 10, 1991, and has subsequently been revised and adopted by the City.

While the Coastal Act policies are the standard of review for coastal development permits until the City completes its LCP, the City, in the interim, has adopted an ordinance that requires conformance with the certified LUP. Thus the City's LUP may provide guidance to the Commission as it considers proposals for development in the Asilomar Dune neighborhood. With regards to environmentally sensitive habitat areas, the LUP contains policies that require the following:

***LUP Policy 2.3.5.1.*** *New development in the Asilomar dunes area (bounded by Asilomar Avenue, Lighthouse Avenue, and the boundary of Asilomar State Park) shall be sited to protect existing and restorable native dune plant habitats... No development on a parcel containing esha shall be approved unless the City is able to find that, as a result of the various protective measures applied, no significant disruption of such habitat will occur.*

***LUP Policy 2.3.5.1.b.*** *Where a botanical survey identifies populations of endangered species, all new development shall be sited and designed to cause the least possible disturbance to the endangered plants and their habitat; other stabilizing native dune plants shall also be protected.*

***LUP Policy 2.3.5.1.c.*** *During construction of new development, habitat areas containing Menzie's wallflowers or Tidestrom's lupines or other rare and endangered species shall be protected from disturbance.*

***LUP Policy 2.3.5.1.d.*** *The alteration of natural land forms and dune destabilization by development shall be minimized. Detailed grading plans shall be submitted to the City before approval of coastal development permits.*

***LUP Policy 2.3.5.1.e.*** *If an approved development will disturb dune habitat supporting or potentially supporting Menzie's wallflowers or Tidestrom's lupines or other rare and endangered species... that portion of the property beyond the approved building site and outdoor living space... shall be protected by a written agreement, deed restriction or conservation easement... These shall include provisions which guarantee remaining dune habitat...provide for restoration of dune plants under an approved landscape plan, provide for long-term monitoring of rare and endangered plants, and maintenance of supporting dune or forest habitat, and restrict fencing to that which would not impact public views or free passage of native wildlife...*

***LUP Policy 2.3.5.1.f.*** *For any site where development will disturb existing or potential native dune plant habitat, a landscaping restoration plan shall be prepared and submitted to the City for approval...Landscaping with exotic plants shall be limited to immediate outdoor living space.*

***LUP Policy 2.3.5.1.g.*** *Require installation of utilities in a single corridor if possible, and should avoid surface disturbance of areas under conservation easement.*



**LUP Policy 2.3.5.1.h.** *Sidewalks shall not be required as a condition of development permit approval in the Asilomar dunes unless the City makes a finding that sidewalks are necessary for public safety where heavy automobile traffic presents substantial hazards to pedestrians, no reasonable alternative exists and no significant loss of environmentally sensitive habitat would result.*

**LUP Policy 3.4.4.1.** *All new development shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.*

**LUP Policy 3.4.4.2.** *The Asilomar Dunes neighborhood shall be maintained as a low density residential area...*

Section 3.4.5.2 of the LUP specifies the maximum aggregate lot coverage allowed for new development in the Asilomar Dunes area as follows:

**LUP Policy 3.4.5.2.** *Maximum aggregate lot coverage for new development in the R-1-B-4 zoning districts is 15% of the total lot area. For purposes of calculating lot coverage under this policy, residential buildings, driveways, patios, decks (except decks designed not to interfere with passage of water and light to dune surface below) and any other features that eliminate potential native plant habitat will be counted. However, a driveway area up to 12 feet in width the length of the front setback shall not be considered as coverage if surfaced by a material approved by the Site Plan Review Committee. An additional 5% may be used for immediate outdoor living space, if left in a natural condition, or landscaped so as to avoid impervious surfaces, and need not be included in the conservation easement required by Section 2.3.5.1(e). Buried features, such as septic systems and utility connections that are consistent with the restoration and maintenance of native plant habitats, need not be counted as coverage.*

## 5. Project Analysis.

The proposed development is for the construction of a new one-story 2,837 square foot single family dwelling, including a 501-sf garage on a 27,034 square foot lot in the Asilomar Dunes neighborhood of the City of Pacific Grove (See Exhibit A, B, C, D, and J). Pursuant to the City's LUP Policy 3.4.5.2 described above, the City exempted a 900 square foot portion of the driveway (12 foot wide by front setback distance of 75 feet) from being considered as site coverage, as the driveway is to be built with semi-permeable materials. Discounting this portion of the driveway, the project proposes a building footprint of 2,837 square feet with 1,209 square feet of paved areas (remaining driveway outside of setback area, back-up area, and walkways). Thus the total aggregate lot coverage as designed is 4,046 square feet (15% site coverage), which is consistent with the City's 15% allowable maximum aggregate lot coverage for the parcel. While the LUP also allows up to 5% lot coverage for an immediate outdoor living area, the site is severely constrained by the location of endangered plant species, and no outdoor living area has been proposed.

Two protected plant species were identified on the property, including Tidestrom's lupine (California Endangered Species Act (CESA)-listed) since 1984, Federal Endangered Species since 1992, California Native Plant Society (CNPS) List 1B) and Monterey spineflower (Federal Threatened Species, and



CNPS List 1B). Because of the distribution of endangered plants across the parcel, both the Moss (1998) and Kephart (2000) reports note that potential impacts from new construction include the unavoidable elimination of existing or potential endangered species habitat. Moss' 1998 biological report specifically states that:

“Development of the property will result in the unavoidable removal (“taking”) of a CESA-listed species (Tidestrom's lupine). Given the distribution of the Tidestrom's lupine plants on the property, there appears to be no reasonable way to develop a driveway and a residence without loss of some of the plants.”

The Revised Dune Habitat Restoration Mitigation Plan, prepared by Kephart, revised August 17, 2000 (Kephart restoration plan), used an overlay of the proposed development atop the 1998 Moss botanical maps to determine the total impact of the proposed development. The Kephart restoration plan indicates that the proposed residence was re-sited from earlier plans in order to minimize impacts to the endangered plant species on site. However, it also states that the proposed development will still result in the unavoidable take of approximately 20 Tidestrom's lupine plants. Additional potential impacts of the project will include shading of plant habitat by the proposed residence, trampling incidental to residential use, water runoff and erosion from impermeable surface, and the introduction of plant species not native to the dunes.

Therefore, because the project will adversely impact sensitive dune habitat areas, it has been conditioned, among other things, to require a deed restriction for protection and restoration of all areas outside of an approved building envelope, and to have a qualified biologist prepare and implement a landscape restoration plan that includes performance standards, and long-term maintenance and monitoring of the undeveloped portions of the property. It is also appropriate to require evidence of an enforceable legal agreement (deed restriction) for implementation of the final restoration and management plan and to define the maximum building envelope. Definition of a building envelope will help reduce adverse impacts to the environmentally sensitive habitat area, as well as minimize disruption to the sand dunes, throughout the life of the development.

In accordance with Coastal Act Section 30240, and with past Commission actions, it is appropriate to require a deed restriction to protect the environmentally sensitive native dune habitat areas over that portion (85 percent) of the lot not counted as building envelope. In order to ensure that the habitat values of the site will continue to be protected into the future, such a recorded document is necessary. The recordation of a deed restriction also provides notice to future property owners regarding the constraints and obligations associated with this site. The deed restrictions allow only those continued uses necessary for, and consistent with, its maintenance as a nature reserve area under private stewardship.

The botanical survey report prepared by consulting coastal biologist Tom Moss (November 8, 1998), details the botanical and biological values of the site and recommends a series of mitigation measures to protect the sensitive habitat and endangered species. These measures, which are incorporated in the City's Conditions and, by reference, in this permit, provide for protection of native dune habitat.



Additionally, a Dune Habitat Restoration/Mitigation Plan, has been prepared for the project by Paul Kephart (dated revised August 17, 2000), which includes provisions for reestablishing and maintaining a native coastal dune landscape on the undeveloped portions of the property. Kephart's revised restoration plan (Exhibit L), which was submitted with the application, involves restoring native dune habitat over a total of 22,823 sf (85%) of the parcel. This includes the restoration of 2,094 sf of buffer area around the driveway and house with non-endangered native dune plants, and the restoration of 20,729 sf of the parcel, outside of the buffer area, which includes an appropriate replanting plan with at least 200 individual Tidestrom's lupine plants. Thus while additional individual tidestrom lupine plants may have become established since the time that this project was originally approved in August, 2001, the restoration plan prepared for the project has an adequate replanting scheme to mitigate for project impacts. The plan also includes criteria to carefully remove and prevent the invasion by ice plant and other non-native plant species within the undeveloped areas on site, and includes restoration procedures, monitoring procedures, performance standards and an implementation and monitoring schedule to meet the goals of the restoration plan. Additionally, the applicants must still obtain approval of a 2081 Management Authorization permit from California Department of Fish and Game for the taking of any CESA-listed plant species

To ensure that the objectives of the Botanical Survey and landscape restoration plan are achieved over the long term, the applicant will be required to record a deed restriction to implement the restoration plan. Future owners of the property would thus have the same obligation for protecting, maintaining and perpetuating the native vegetation on the site. This is consistent with previous Coastal Commission approvals, LUP policies and conditions of the City's approval and is necessary to ensure the long-term protection of this habitat and avoid taking of property consistent with Coastal Act Section 30010.

No permanent fencing has been proposed for this project. However, if any permanent fencing is to be contemplated for the residence at some future time, split rail or similar landscape fencing may be used in order to discourage trampling of the area to be restored/rehabilitated outside of the building envelope and the immediate outdoor living area. Any fencing to be used onsite must be designed to protect public views and allow free passage of native wildlife, as required by LUP Policy 2.3.5.1(e) and should maintain the open space character of the neighborhood.

Temporary exclusionary fences to protect the endangered Tidestrom's lupines and other sensitive native dune plant habitat areas outside of the building envelope during construction are a necessary mitigation measure and are required to assure protection of these environmentally sensitive habitat areas. To assure compliance with the landscape restoration plan, the environmental consultant must monitor the site on a weekly basis during construction. Experience has shown that exclusionary fencing helps to assure that workpeople and materials stay outside sensitive natural habitat areas. Weekly monitoring during construction is required as a condition of this permit, consistent with LUP Policy 2.3.5.1(c) regarding compliance inspections during the construction phase.

As designed, the project lot coverage has been proposed for the maximum site coverage allowable. Therefore, no future additions to the residence will be allowed if they require additional lot coverage. Finally, all utilities will be installed in a single corridor underlying the driveway, consistent with LUP Policy 2.3.4.1.g.



### c. ESHA Conclusion

As conditioned to require implementation of the recommendations of the Botanical/Biological Report and landscape restoration plans; incorporation of the City's mitigation measures; recordation of deed restrictions, including restoration and maintenance of natural habitat equivalent to 85 percent of the lot area; identification of temporary exclusionary fencing and monitoring, to assure no disturbance of the existing native plant habitat areas; and prohibition of any additions, the proposed development can be found consistent with the LUP sensitive habitat policies. Although the development is not consistent with Coastal Act Policy 30240, which does not allow *any* disruption of the habitat by uses not dependent on the habitat, Coastal Act Section 30010 prohibits the taking of property and, in this case, requires that some economic use must be allowed on the site. As conditioned, the project allows an economic use of the site and protects the environmentally sensitive habitat outside of the immediate building envelope.

## 2. Visual Resources and Community Character

### A. Applicable Visual Resources and Community Character Policies

Section 30251 of the Coastal Act requires that new development in highly scenic areas "such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation. . ." shall be subordinate to the character of its setting; the Asilomar area is one of those designated in the plan. The Coastal Act further provides that permitted development shall be sited and designed to protect views in such scenic coastal areas; and, in Section 30240(b), requires that development adjacent to parks and recreation areas shall be sited and designed to avoid degradation of those areas.

The City's certified Land Use Plan contains policies that require the following:

***LUP Policy 2.5.2.*** ...Coastal area scenic and visual qualities are to be protected as resources of public importance. Development is required to be sited to protect views, to minimize natural landform alteration, and to be visually compatible with the character of surrounding areas.

***LUP Policy 2.5.4.1.*** It is the policy of the City of Pacific Grove to consider and protect the visual quality of scenic areas as a resource of public importance. The portion of Pacific Grove's coastal zone designated scenic includes: all areas seaward of Ocean View Boulevard and Sunset Drive, Lighthouse Reservation Lands, Asilomar Conference Ground dune lands visible from Sunset Drive, lands fronting on the east side of Sunset Drive; and the forest front zone between Asilomar Avenue and the crest of the high dune (from the north side of the Pico Avenue intersection to Sinex Avenue)

***LUP Policy 2.5.5.1.*** New development, to the maximum extent feasible, shall not interfere with public views of the ocean and bay.

***LUP Policy 2.5.5.4.*** New development on parcels fronting on Sunset Drive shall compliment the open space character of the area. Design review of all new development shall be required. The following standards shall apply:



*a). Minimum building setbacks of 75 feet from Sunset Drive shall be maintained. Larger setbacks are encouraged if consistent with habitat protection.*

*b). Residential structures shall be single story in height and shall maintain a low profile complimenting natural dune topography. In no case shall the maximum height exceed 18 feet above natural grade within the foundation perimeter prior to grading.*

*c). Structures shall be sited to minimize alteration of natural dune topography. Restoration of disturbed dunes is mandatory as an element in the siting, design and construction of a proposed structure.*

*d). Earthtone color schemes shall be utilized and other design features incorporated that assist in subordinating the structure to the natural setting.*

***LUP Policy 2.5.5.5.*** *Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of proposed plantings, shall be approved by the Architectural Review Board.*

***LUP Policy 2.5.5.6.*** *...Utilities serving new single-family construction in scenic areas shall be placed underground.*

***LUP Policy 3.4.4.1.*** *All new development in the Asilomar Dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.*

The LUP identifies the Asilomar Dunes area bounded by Lighthouse Avenue, Asilomar Avenue and the Asilomar State Beach and Conference Grounds as a highly scenic area of importance and policies of the LUP as described above serve to protect public views and scenic resources in the Asilomar dunes area. The LUP indicates that south of Lighthouse Avenue, the Asilomar Dunes area has been substantially developed with single family residential dwellings. However, parcels that have remained vacant have served to “soften the contrast between existing development and the expansive open space seaward of Sunset Drive.”

## B. Visual Resources and Community Character Analysis

As designed, the project will not detract from views of the ocean from public viewing areas defined in the LUP’s Shoreline Access Map (Exhibit H). The project site is somewhat visible from Arena Ave and Calle los Amigos, as shown in photos taken by the applicant (Exhibit J). However, existing residences and topography currently obstruct views from Arena Avenue (see photo 1), and because the site slopes down from Calle de los Amigos, the proposed dwelling will not significantly obstruct public views of the Ocean (see photo 2). As described above, the Commission has approved a number of new homes similar in size to this proposal, along Sunset Drive. (e.g., J. Miller, and Knight). These houses were set back at least 75 feet from Sunset Drive in order to protect the native dune habitat on site.

The proposed development is consistent with the LUP policies described above. The single story residence has been designed to maintain a low profile complimenting the natural dune topography, and



does not exceed the 18-foot height restriction (see Exhibit I), as measured from natural existing grade. The residence has also been sited to avoid adverse impacts to known populations of botanical species and to minimize adverse impacts to potential habitat areas present on site. The residence has been setback 116 feet from Sunset Drive to protect the native dune plant habitat located on site, and includes a basement garage, below the terrace area, to minimize the footprint and permanent landform alteration that would occur on site, were the garage sited above ground. The side yard setbacks are 15 and 32 feet (from the southern and northern property boundaries, respectively) and the rear yard setback is 60 feet.

Project plans were reviewed by the Pacific Grove Architectural Review Board on February 13, 2001. Minutes from these hearings note that the “low pitch roof was appropriate in the sand dunes...” and that the modulation of the building helped it to conform to the dune topography.

As required by LUP Policy 2.5.5.5, final Architectural approval was granted (for the design and landscape restoration plan), and the Mitigation Monitoring Plan by the ARB at the February 13, 2001, hearing with a vote of 5-0. As required by 2.5.5.4.d, the permit has been conditioned to require earthtone color scheme to assist in subordinating the structure to the natural dune setting.

The applicant has agreed that all areas outside of the building envelope will be excluded from development by a deed restriction required to protect the environmentally sensitive habitat on the remaining undeveloped portion of the property, i.e., 85 percent of the property. As the project design is already proposed for the maximum allowable site coverage, no future additions will be allowed that would increase the total aggregate site coverage or create additional view impacts. As the subject parcel lies between other existing development, it is not located in an area that would block existing public ocean views.

The project also proposes the excavation of 289 cubic yards of grading for the basement area. The excavated material shall either be incorporated with landscape restoration efforts on-site or be provided to the State Parks for use in dune restoration efforts in the Asilomar State Beach area. As no grading plans were submitted with the application, the project has been conditioned so that if excavated materials are to be incorporated onsite, a final grading plan that ensures protection and preservation of dune habitat must be submitted for review and approval. No sand excavated from the site shall be exported outside of the Asilomar Dunes area.

### C. Visual Resources and Community Character Conclusion

As conditioned by this permit, no future additions are allowed, to ensure that no additional view impacts will occur. Additional required visual resource mitigation measures include the use of earthen-tone finishes and the undergrounding of utilities as proposed, and final grading plans. Accordingly, the project can be found consistent with Section 30251 and 30240(b) of the Coastal Act and LUP visual resource policies.

## 3. Archaeological Resources

### A. Applicable Archaeological Resources Policies



Section 30244 of the Coastal Act states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

Land Use Plan Section 2.4 also provides guidance on this topic as follows:

***LUP Policy 2.4.5.1.*** *Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:*

- (a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.*
- (b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.*
- (c) Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.*

## B. Archaeological Resources Analysis

The subject site is located within an archaeologically sensitive area (see Exhibit G). Therefore, an archaeological survey was conducted for the subject parcel and a report prepared by Mary Doane and Trudy Haversat for Archaeological Consulting (June 8, 1998). The survey results indicated that numerous archaeological sites are located within one kilometer of the project site, and two sites are located immediately adjacent to the subject parcel. While field reconnaissance of the site, conducted June 1, 1998, resulted in no finding of materials frequently associated with prehistoric cultural resources (eg., dark soil containing soil fragments, broken or fire-altered rocks, bone or bone fragments, etc). However, since construction activities may unearth previously undisturbed materials, the project has been conditioned to prepare and implement an archaeological mitigation plan if archaeological resources are encountered.



### C. Archaeological Resources Conclusion

As conditioned to require suspension of work and development of a mitigation plan if archaeological materials are found, the proposed development is consistent with Section 30244 of the Coastal Act and approved LUP archaeological resource policies.

## 4. Water Supply

### A. Applicable Water Supply Policies

Coastal Act Section 30250 states in part that

*[n]ew residential. . . development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. .*

### B. Water Supply Analysis

The Monterey Peninsula Water Management District (MPWMD) allocates water to all of the municipalities on the Monterey Peninsula. The actual water purveyor is the California American Water Company (Cal Am). Each municipality allocates its share of the water to various categories of development, such as residential, commercial, industrial, etc. Water is currently not available for the project. However, following Architectural Review Board approval of the project February 13, 2001, and submittal of required construction drawings, engineering calculations, etc., the applicants have been placed on the City's Water Waiting List. At the time of the applicant's original application in 2001, the applicants were #32 on the Water Waiting List (Exhibit K). The City Council evaluates this list twice each year for consideration of allocating available water to the projects on the list. Since that time the applicants have moved up 13 places on the water waiting list to #19 (see Exhibit N).

Coastal Act Section 30250 directs development to be located in or near an area with sufficient resources to accommodate it. The applicant's lot is located in a residential area serviced by the Cal Am Water Company. The applicants have applied and are on the City's Water Waiting List for water service. However, because water is not currently available to serve the project, evidence of such a water assignment is required prior to issuance of the permit in order to comply with Section 30250. Because of the water shortages throughout Monterey County and the Monterey peninsula, the County Water Resources Agency and the Monterey Peninsula Water Management District continues to pursue studies and projects designed to obtain additional long-term water supplies, some of which will be allocated to those on the water waiting list in the future. In light of these efforts, and the fact that the applicants place on the water waiting list has moved up significantly on the list, it is reasonable to believe that the City might be able to grant the applicant a water permit within the two-year time period of this permit. However, in the event that the permit is not issued within the next two years, and further permit extensions are requested, the absence of a water assignment may constitute a changed circumstance That could affect the Commission's ability to extend the permit in the future.



### C. Water Supply Conclusion

The applicants currently do not have evidence of water availability for the project, but have been placed on the City's Water Waiting List. Their position on the list indicates that water may be available to serve the project within the two year life of this permit. With the inclusion of Special Condition 10, which requires evidence of water availability prior to issuance, the project is consistent with Coastal Act Section 30250 regarding water supply.

### E. Local Coastal Programs

The Commission can take no action, which would prejudice the options available to the City in preparing a Local Coastal Program, which conforms to the provisions of Chapter 3 of the Coastal Act (Section 30604 of the Coastal Act). Because this neighborhood contains unique features of scientific, educational, recreational and scenic value, the City in its Local Coastal Program will need to assure long-range protection of the undisturbed Asilomar Dunes.

While the northern Asilomar Dunes area was originally included in the work program for the Del Monte Forest Area LUP (approved with suggested modifications, September 15, 1983), the area was annexed by the City of Pacific Grove in October, 1980, and therefore is subject to the City's LCP process. Exercising its option under Section 30500(a) of the Coastal Act, the City in 1979 requested the Coastal Commission to prepare its Local Coastal Program. However, the draft LCP was rejected by the City in 1981, and the City began its own coastal planning effort. The City's LUP was certified on January 10, 1991. The City is currently formulating implementing -ordinances. In the interim, the City has adopted an ordinance that requires that new projects conform to LUP policies. (Of course, the standard of review for coastal development permits, pending LCP completion, is conformance with the policies of the Coastal Act.)

The LUP contains various policies that are relevant to the resource issues raised by this permit application, particularly with respect to protection of environmentally sensitive habitat and scenic resources. Finding D above summarizes the applicable habitat protection policies; Finding E addresses the LUP's visual resource policies; and Finding F discusses archaeological resource policies. The City's action on the project also generally accounted for the proposed LUP policies. Where procedural standards are absent, the City's mitigations are augmented by the conditions of this permit, particularly with respect to native plant restoration and maintenance.

Therefore, as conditioned, the proposed development is consistent with the policies contained in Chapter 3 of the Coastal Act and will not prejudice the ability of the City of Pacific Grove to prepare and implement a complete Local Coastal Program consistent with Coastal Act policies.

### F. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding must be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed



development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

On February 13, 2000, the City of Pacific Grove granted approval of a Mitigated Negative Declaration, for the proposed development. The environmental review of the project conducted by Commission staff involved the evaluation of potential impacts to relevant coastal resource issues, including environmentally sensitive dune habitat, visual resources and community character, archaeologically sensitive resources, and water supply issues. This analysis is reflected in the findings that are incorporated into this CEQA finding. Any public comments have been addressed in the findings.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

